



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: August 11, 2009

TO: Mayor and Councilmembers

FROM: Facilities Planning and Development, Airport Department

SUBJECT: Avigation And Noise Easement For 5441 Hollister Avenue, Goleta

RECOMMENDATION: That Council:

- A. Approve and authorize the City Administrator to execute and record a grant deed of avigation and noise easement and agreement imposing conditions on real property by and between St. Athanasius Orthodox Church and the City of Santa Barbara; and
- B. Adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Accepting an Avigation and Noise Easement Imposing Conditions on Real Property Known as Assessor's Parcel Number 071-140-072.

DISCUSSION:

On March 1, 2006, the Planning Commission of the County of Santa Barbara approved construction of a new 5.35 acre church complex at 5441 Hollister Avenue (APN 071-140-072), which is located near the boundary of the Santa Barbara County Airport Land Use Plan's "Safety Area 2 – Approach Zone" for Runway 25. The County of Santa Barbara imposed a condition of approval on the project requiring the property owner, St. Athanasius Orthodox Church, to grant the City of Santa Barbara an avigation and noise easement. The avigation and noise easement will provide notice to current and future property owners of the effects of airport operations and will establish provisions allowing aircraft using the Airport to have the free and unobstructed right of flight in the airspace above the parcel.

ATTACHMENT: Grant Deed of Avigation and Noise Easement

PREPARED BY: Andrew Bermond, Associate Planner

SUBMITTED BY: Karen Ramsdell, Airport Director

APPROVED BY: City Administrator's Office

RECORDING AT REQUEST OF
AND TO BE RETURNED TO:
CITY OF SANTA BARBARA
AIRPORT DEPARTMENT
601 Firestone Road
Goleta, CA 93117

**GRANT DEED OF AVIGATION AND NOISE EASEMENT AND
AGREEMENT IMPOSING CONDITIONS ON REAL PROPERTY**

5441 Hollister Avenue
Goleta, California 93117
071-140-072

RECITALS

WHEREAS, St. Athanasius Orthodox Church, a California non-profit corporation (herein the "Grantor") is the owner in fee simple of that certain parcel of land situated in the County of Santa Barbara commonly known as 5441 Hollister Avenue, Santa Barbara, California and more particularly described in Exhibit A and attached hereto and made a part hereof (herein the "Servient Parcel"); and,

WHEREAS, City of Santa Barbara, a municipal corporation (herein the "Grantee") is the owner of certain properties within the County of Santa Barbara which are described in a Deed from the United States of America to Grantee dated February 24, 1949, which was recorded in Book 861 at Page 33 of the official records of the County of Santa Barbara, State of California (herein the "Dominant Parcel"); and,

WHEREAS, the Santa Barbara Municipal Airport, (herein the "Airport") is operated on the Dominant Parcel which is in close proximity to the Servient Parcel; and,

WHEREAS, on March 1, 2006, Grantor received approval from the County of Santa Barbara for construction of a 5.35 acre church complex adjacent to the Santa Barbara County Airport Land Use Plan's Safety Area 2-Approach Zone with said approvals being conditioned upon Grantor giving Grantee an avigation easement; and,

WHEREAS, Grantor and Grantee wish to establish provisions so that aircraft using Airport shall have the right of flight and the right to cause noise, light, and other effects associated with the operation of aircraft in the airspace over and above the Servient Parcel.

NOW, THEREFORE, Grantor, for consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants and conveys to Grantee a perpetual public-use avigation and noise easement in, through, across and over the airspace of the Servient Parcel subject to termination as expressly provided herein and right-of-way for the free and unobstructed flight of

aircraft, of any and all kinds now known or hereafter invented, used or designed for navigation or flight in the air, of the class, size and category permitted by law to operate at Airport.

1. Grantor, understands and acknowledges that the rights herein granted shall include, but not limited to, the right in such airspace to allow, make and emit such noise, light vibrations, fumes, exhaust, smoke, air currents, dust fuel particles, radio, television, and other electromagnetic interferences, and all other effects as may be inherent to the operation of aircraft for navigation flight in the air.

2. Grantor hereby full waives, remises and releases any right or cause of action that it may now have or that it may have in the future against Grantee, its successors, and assigns, and covenants not to sue due to such noise, light, vibrations fumes, exhaust, smoke, air currents, dust fuel particles, radio, television, and other electromagnetic interferences, and all other similar or related effects that may be caused or may have been caused by the operation of aircraft landing at, taking off from, or operating at Airport as permitted under this easement (collectively the "effects"). Said release and covenant shall include, but not limited to, claims, known or unknown, for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, diminution of property values, nuisance, or inverse condemnation or injunctive or other extraordinary or equitable relief arising out of the effects.

3. It is further agreed that Grantee as owner and operator of Airport shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, or establishing curfews, noise or other regulations, except to the extent if any, that such actions are validly required by government authority, Grantor reserves such use, rights and privileges in the Servient Parcel as may be exercised and enjoyed without interference with or abridgment of the rights hereby granted.

4. This grant of an aviation and noise easement shall not operate to deprive Grantor, its successors or assigns, of any rights that it may from time to time have against any other individual aircraft operator for the negligent or unlawful operation of an aircraft.

5. For and on behalf of itself, its successors and assigns, Grantor hereby covenants with Grantee for the direct benefit of the real property constituting Airport that neither Grantor nor its successors in interest or assigns shall hereafter construct or permit the construction or growth of any structure, tree or other object that penetrates an approved approach, transitional, horizontal, or control surface, or that constitutes an obstruction to air navigation or that obstructs or interferes with the use of the flight easements and rights of way herein granted or that creates electrical interference with radio communication between any installation upon Airport and aircraft, or as to make it difficult for pilots to distinguish between airport lights and other lights, or as to impair visibility in the vicinity of Airport, or as otherwise to endanger the landing, take-off or maneuvering of aircraft. Grantee reserves the right, upon reasonable notice to Grantor, to mark and light as obstructions to air navigation any such building, structure, tree or other object now upon, or that in the future may be upon Grantor's property, together with the right of ingress to, egress from, and passage over Grantor's property for the above purpose, which shall be accomplished at Grantee's expense.

The foregoing notwithstanding, Grantor and Grantee acknowledge, accept and agree that the Servient Parcel may be improved pursuant to the approvals described in the Recitals and that such improvements shall not be deemed in violation or breach of the terms and conditions set forth in this Grant.

6. All promises, covenants, conditions and reservations contained in this easement are made and entered into for the benefit of Grantee. These promises covenants, conditions, and reservations, shall run with the Servient Parcel, described and identified on Exhibit B attached, and bind Grantor's heirs, administrators, executor, successors and assigns to the maximum extent now or hereafter permitted by statute or case law and are intended by the parties to comply with California Civil Code Section 1468. "Successors and assigns" as used in this paragraph includes, without limitation, invitees, licensees, permittees, tenants, and lessees.

7. The avigation and noise easement, covenants, and agreements described herein shall continue in effect until Airport shall be abandoned and shall cease to be used for public airport purposes.

IN WITNESS WHEREOF, Grantor and Grantee have caused this grant of easement to be executed on _____, 2007

GRANTEE:
CITY OF SANTA BARBARA
Municipal Corporation

GRANTOR:
ST. ATHANASIOS ORTHODOX
CHURCH

City Administrator

ATTEST:

By: _____
City Clerk

APPROVED AS TO CONTENT:

By: _____
Airport Director

APPROVED AS TO FORM:

By: _____
Assistant City Attorney